85-1708

No.

Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

STATE OF CALIFORNIA, *et al.*,
Appellants,

v.

CABAZON BAND OF MISSION INDIANS, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

JURISDICTIONAL STATEMENT

JOHN K. VAN DE KAMP
Attorney General of the State of California
STEVE WHITE
Chief Assistant Attorney General
RODERICK E. WALSTON*
FREDERICK R. MILLAR, JR.
Supervising Deputy Attorneys General
RUDOLF CORONA, JR.
Deputy Attorney General
6000 State Building
San Francisco, CA 94102
Tel: (415) 557-3920
Attorneys for Appellant State of California

GERALD J. GEERINGS
County Counsel for Riverside County
PETER H. LYONS
Principal Deputy County Counsel
GLENN R. SALTER
Deputy County Counsel
3535 Tenth Street, Suite 300
Riverside, CA 92501
Tel: (714) 787-2421
Attorneys for Appellant Riverside County

*Counsel of Record

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F. CA 94103 • (415) 864-2300

QUESTION PRESENTED

Whether state and local laws prohibiting commercial gambling apply to Indian gambling operations, conducted on Indian reservations, that are patronized primarily by non-Indians.

LIST OF PARTIES

The appellants are the State of California; Riverside County, California; and Ben Clark, Sheriff of Riverside County.

The appellees are the Cabazon Band of Mission Indians and the Morongo Band of Mission Indians.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The U.S. Court of Appeals filed an original opinion, reported at 783 F.2d 900, and subsequently, on its own motion, filed an amended opinion that is reprinted at Appendix 1-11. The district court did not issue a written opinion, findings of fact, or conclusions of law. The order, judgment, and two notices of entry of the district court are set forth at Appendixes 12-15, 16-18, 19, and 20, respectively.

JURISDICTIONAL GROUNDS

This action challenges the validity of State and local laws prohibiting commercial gambling as applied on Indian reservations. The federal courts have jurisdiction under 28 U.S.C. §1331.

The original decision of the U.S. Court of Appeals for the Ninth Circuit was filed and entered on February 25, 1986, and the amended opinion was filed and entered on April 8, 1986. App. 1. No petition for rehearing was filed. The notice of appeal was filed in the Court of Appeals on April 14, 1986. App. 21-22.

This appeal is filed under 28 U.S.C. § 1254(2). See *Dutton v. Evans*, 400 U.S. 74 (1970); *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954); *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973); cf. *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 (1973); *Antoine v. Washington*, 420 U.S. 194 (1975); *Huron Cement Co. v. Detroit*, 362 U.S. 440 (1960.

APPLICABLE FEDERAL LAWS

Public Law 280, 67 Stat. 588 (1953), 18 U.S.C. § 1162, 28 U.S.C. § 1360, is set forth at Appendix 23-25. The Organized Crime Control Act, 84 Stat. 937 (1970), 18 U.S.C. § 1955, is set forth at Appendix 25-26.

STATEMENT OF THE CASE

1. Nature of the Controversy

The Cabazon Tribe and Morongo Tribe conduct high stakes bingo games on their reservations, both of which are located in Riverside County, California. The games are operated by non-Indian professional operators, who receive a percentage of the profits. App. 2. The federal government does not regulate, supervise, or monitor the games. The games are authorized by tribal ordinance, but the Morongo ordinance has not been federally approved. The games, according to the Ninth Circuit, "are played predominantly by non-Indian participants." *Id.*

California law prohibits lotteries except where authorized by law. Cal. Pen. Code § 320. Under California law, charitable organizations may operate bingo games for charitable purposes; the games must be operated by members of the charitable organization; and jackpots cannot exceed $250. *Id.* at 326.5. The tribal bingo games violate all these provisions. App. 2. Indeed, the tribal jackpots greatly exceed $250, for the jackpots include cars, pickups, boats, and cash awards of thousands of dollars.[1]

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[1] A State investigator, visiting the Cabazon bingo parlor one night in 1984, observed that the prizes included: a 1984 Dodge pickup and All

The Cabazon Tribe also conducts three card parlor games on its reservation: draw poker, lowball draw poker, and panguingue. The card parlor games violate a Riverside County ordinance. App. 2.

2. The Proceedings Below

The Tribes brought consolidated actions for injunctive and declaratory relief and for damages against Riverside County, alleging that State and County laws prohibiting commercial gambling cannot be applied to the tribal bingo and card parlor games. The State of California intervened. In response to cross-motions for summary judgment, the district court granted the Tribes' motion and denied the State and County's motion, ruling that State and County gambling laws are inapplicable to the tribal operations. The district court issued final judgment under Rule 54(b) of the Federal Rules of Civil Procedure; issued a permanent injunction restraining the State and County from applying their gambling laws on the reservations; and retained jurisdiction to consider the damages issue. App. 12-20.[2] The State and County appealed.

On appeal, the Ninth Circuit affirmed the lower decision, ruling that State and County gambling laws cannot be applied on Indian reservations. App. 1-11. The court reasoned that such application is not authorized by the "federal common law," as applied by this Court in *Rice v. Rehner*, 463 U.S. 713 (1983). According to the court, Indian tribes have an "inherent sover-

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Terrain vehicle; a Sylvan Bass boat valued at $6,771; a do-it-yourself jackpot of $2,250; a Bonanza Bingo jackpot of $6,300; and regular jackpots of $150, with a super jackpot of $750 for four games. Cal. Exh. 17, at pp. 3-5. Approximately 300 people were playing the bingo games, most of whom were non-Indians. *Id.* at p. 6.

The Morongo Bingo games have advertised: "High Stakes; Over $20,000 nightly; more than $5,000,000 in 1983; $15,000.00 Jackpot Must Go Every Saturday Night in January; 1984 Auto-Every Sunday Must go; Matinee Every Saturday During January; Mystery Door Prize Every Night in January." Salter Dec., Exh. B.

[2] On stipulation, the district court subsequently dismissed the Morongo damages claim.

eign" right to conduct gambling operations patronized by non-Indians, and the tribal interest in raising revenue outweighs the State and County's regulatory interests. App. 10-11. The court also ruled that Public Law 280, 18 U.S.C. § 1162, 28 U.S.C. § 1360, and the Organized Crime Control Act, 18 U.S.C. § 1955, do not authorize application of State and County gambling laws on Indian reservations. App. 3-6. The court's decision applies both to the State bingo statutes and the County card parlor ordinance. App. 2 n. 1.

REASONS FOR GRANTING PLENARY REVIEW

I

THIS CASE RAISES A SIGNIFICANT FEDERAL QUESTION OF NATIONAL IMPORTANCE, AND A CONFLICT EXISTS AMONG LOWER COURTS CONCERNING THE QUESTION

This case raises the question whether state and local gambling laws apply on Indian reservations, a question never decided by this Court. The question has gained national significance and attention, as Indian tribes in California and elsewhere are conducting high stakes bingo games to generate huge tribal revenues. The bingo games are lucrative because they attract non-Indians who cannot lawfully play high stakes bingo elsewhere in the state. The games provide opportunities for organized criminal intrusion, because they involve high stakes and are not regulated by the federal government.

Tribal bingo operations are proliferating in California and nationally. As of mid-1985, at least 100 tribal bingo operations were in effect in 19 states, and the number has increased since then.[3] At least 26 such operations are now in effect in California

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[3] The U.S. Department of the Interior has informally advised the California Attorney General's office that, according to a Department survey conducted in 1985, at least 100 tribal bingo operations were in effect in 19 states at that time. The Indian tribes conducting the bingo games are listed at Appendix 27-29. The Department also advised that many tribal bingo operations have been initiated since the survey was

alone. See note 3, *supra*. The proliferation has occurred because of recent Fifth and Ninth Circuit decisions holding that State and local gambling laws do not apply to tribal bingo operations. See *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982); *Barona Group v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, 461 U.S. 929 (1983). The Fifth and Ninth Circuit decisions, as will be explained below, conflict with recent decisions of the Maine Supreme Judicial Court and the Oklahoma Supreme Court holding that state and local gambling laws *apply* to tribal bingo operations. See *Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me. Sup. Jud. Ct.), *appeal dismissed*, 464 U.S. 923 (1983); *Oklahoma v. Seneca-Cayuga Tribe*, 711 P.2d 77 (Okla. Sup. Ct. 1985); see pages 14-15, *infra*. Thus, a conflict exists among lower courts concerning the issue here.

This Court should grant review both to resolve the conflict among lower courts, and because the case presents "an important question of federal law which has not been, but should be, settled by this Court." Rule 17.1(c), Rules of the Supreme Court.

II

THE NINTH CIRCUIT DECISION CONFLICTS WITH THIS COURT'S DECISIONS HOLDING THAT INDIAN TRIBES DO NOT HAVE A SOVEREIGN RIGHT TO MARKET PRODUCTS TO NON-INDIANS IN VIOLATION OF STATE LAW

The Ninth Circuit held that Indian tribes have a sovereign right to conduct commercial gambling operations patronized by non-Indians. App. 11. The Ninth Circuit decision conflicts with this Court's recent decisions in *Rice v. Rehner*, 463 U.S. 713 (1983), and *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980), which hold that Indian tribes do *not*

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completed. The gross and net revenues generated by the tribal operations are unknown because the games are not regulated.

In California, 10 tribal bingo operations were in effect when the instant case was submitted to the district court, but the figure has since risen to 26. App. 29.

have a sovereign right to market products to non-Indians in violation of state law.

In *Rice* and *Colville*, this Court followed the general rule that state laws apply on Indian reservations unless preempted by federal law or inconsistent with tribal self-government. *Rice*, 463 U.S. at 718; *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973). This rule requires a balancing of state, federal, and tribal interests. *Rice*, 463 U.S. at 718-720; *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980) (the question requires a "particularized inquiry" into the "nature of state, federal, and tribal interests at stake"). Under the balancing test, the tribal interest is strongest, and the State interest weakest, if a sovereign tribal "tradition" exists under the particular circumstances. *Rice*, 463 U.S. at 719. Coversely, the state interest is strongest if the tribal activity involves non-Indians. *Id.* at 720 n. 7; *Colville*, 447 U.S. at 151, & n. 27, 161. The balancing test applied in *Rice* and *Colville* is apparently a form of federal common law, in that it is a judicial doctrine rather than a constitutional or statutory one.

Applying the balancing test in *Rice*, this Court upheld California's right to regulate liquor sales by federally-licensed Indian traders to non-Indians on a reservation. The Court, reversing the Ninth Circuit, reasoned that Indian tribes have not "traditionally" regulated liquor sales to non-Indians, and therefore the State's regulatory interest outweighs the tribal interest. *Rice*, 463 U.S. at 720-725. In *Colville*, this Court upheld the State of Washington's right to tax cigarette sales by Indian retailers to non-Indians on a reservation. The Court reasoned that the Indian sellers were attempting to "market an exemption" from State laws to non-Indian purchasers, and that the "market existed in the first place only because of a claimed exemption from these very [state] taxes." *Colville*, 447 U.S. at 155, 157. The Court stated in both cases that state "regulation of sales to non-Indians . . . simply does not 'contravene the principle of tribal self-government' " because Indian tribes "have no vested right to a certain volume of sales to non-Indians, or indeed to any such sales at all." *Rice*, 463 U.S. at 721 n. 7, quoting from *Colville*, 447 U.S. at 151, & n. 27. In *Colville*, this Court specifically rejected the tribe's "economic argument" that it has a right to raise revenue by selling products

to non-Indians. *Colville*, 447 U.S. at 154. As one commentator has observed, *Colville* suggests that this Court "may be willing to limit the immunity given to Indian tribes when they act commercially." Note, "In Defense of Tribal Sovereign Immunity," 95 *Harv. L. Rev.* 1058, 1068 (1982).

The Ninth Circuit, however, held that State and local gambling laws do not apply on Indian reservations because Indian tribes have a sovereign right to conduct gambling operations patronized by non-Indians. App. 10-11. The court ruled that State and local laws are not preempted by federal law, but instead infringe on tribal sovereignty. *Id.* at 7. The sovereignty issue, the court held, turns *not* on whether Indian tribes have "historically engaged in a particular activity," but on whether the tribes are "engaged in a traditional governmental function." *Id.* at 11. The Tribes here, according to the court, are "engaged in the traditional governmental function of raising revenue." *Id.* The tribal interest in raising revenue, the court stated, "outweighs the State's interest in protecting against the *potential* for intrusion of organized crime," *id.* at 10 (emphasis in the original), although the court recognized the State interest as "legitimate" and "commendable." *Id.* at 8.

The conflict between the Ninth Circuit decision and *Rice* and *Colville* is obvious and direct. In *Rice* and *Colville*, this Court held that Indian tribes do not have a sovereign right to market products to non-Indians, and that tribal economic interests do not outweigh legitimate state interests. The Ninth Circuit, however, held that Indian tribes have a sovereign right to market a gambling product to non-Indians, because tribal economic interests outweigh even "legitimate" state interests. App. 8, 10-11. *Colville* holds that Indian tribes cannot "market an exemption" from state laws to non-Indians, particularly where the market exists because of state restrictions against non-Indians. *Colville*, 447 U.S. at 155. The Ninth Circuit, however, held that Indian tribes can market exemptions from state gambling laws to non-Indians, even where the market exists because the state prohibits gambling. Under the Ninth Circuit decision, Indian tribes can take commercial advantage of state gambling prohibitions by

marketing to non-Indians the very product that is prohibited. This result conflicts with both *Rice* and *Colville*.[4]

Indeed, the conflict between *Rice* and *Colville* and the Ninth Circuit decision concerns the fundamental question—vital to the essence of tribal sovereignty—whether the tribal sovereign "tradition" is measured by the tribal activity or by tribal economic interests. In *Rice*, this Court measured the tradition in terms of the *activity*; the question was whether Indian tribes have traditionally regulated liquor sales to non-Indians. The Ninth Circuit, however, held that the tribal "activity" is irrelevant, and focused instead on tribal economic interests. App. 11. In effect, the Ninth Circuit defined tribal sovereignty in purely economic terms, failing to consider whether commercial gambling is a traditional form of tribal activity. Under the Ninth Circuit analysis, Indian tribes would have a sovereign right to market any commodity or contraband to non-Indians as long as the marketing is profitable, no matter how much such marketing is outside the tribal tradition or illicit under state law. This result expands the concept of tribal sovereignty beyond its legitimate scope, and is not consistent with the "accommodation" of state, federal, and tribal interests that is the essence of modern federal Indian law. See *Rice*, 463 U.S. at 719, quoting from *Colville*, 447 U.S. at 156.

By expanding tribal sovereignty under an economic analysis, the Ninth Circuit has departed from the modern "trend" of

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[4] The Ninth Circuit distinguished *Rice* on the ground that *Rice* involved a federal statute—18 U.S.C. § 1161—not relevant here. App. 5 n. 4. Although the cases are different in that respect, *Rice* primarily focused on the tribal tradition, not the federal statute. *Rice*, 463 U.S. at 720-725. Moreover, as explained later, the Organized Crime Control Act authorizes the application of state gambling laws on Indian reservations, and this federal enactment expresses federal policy here as clearly as section 1611 expressed federal policy in *Rice*. See page 16, *infra*.

The Ninth Circuit distinguished *Colville* on the ground that the Tribes here are giving "value" to non-Indians, unlike the situation in *Colville*. App. 13. Although the cases are different in that respect, *Colville* primarily held that Indian tribes cannot "market an exemption" from state laws to non-Indians where the market is created by state restrictions against non-Indians. *Colville*, 447 U.S. at 155.

federal Indian law, under which federal preemption rather than tribal sovereignty is the focal point in determining state jurisdiction over Indian reservations. See *Rice*, 463 U.S. at 718; *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172 (1973). Under this trend, tribal sovereignty is a "backdrop" for the preemption analysis. *Id.* The Ninth Circuit, however, specifically held that federal law does not preempt state law, and instead rested its decision on tribal sovereignty grounds. App. 7. The absence of federal preemption distinguishes this case from modern Indian law cases where this Court has invoked federal preemption in striking down state laws as applied on Indian reservations. See, *e.g.*, *White Mountain Apache Tribe v. Bracker*, *supra*, 448 U.S. 136; *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983); *McClanahan v. Arizona State Tax Comm'n*, *supra*, 411 U.S. 164. Indeed, the absence of federal preemption, coupled with the fact that the tribal activity involves non-Indian patrons, strongly supports the application of State and local laws here. The Ninth Circuit, by holding that tribal sovereignty is an absolute bar rather than a backdrop, even where federal preemption does not apply and where non-Indians are involved, carries tribal sovereignty beyond limits ever recognized by this Court.

The tribal gambling operations involved here are not consistent with the tribal "tradition," as the tradition is measured by the activity itself. Indian tribes have not traditionally conducted high stakes gambling operations that solicit and depend on non-Indian patronage, particularly where the games are successful because they are illegal under state law. The tribal economic base has never depended on large scale gambling operations, conducted in buildings erected specially for that purpose. The Ninth Circuit, by focusing on economic interests rather than activity, would allow Indian reservations to become gambling enclaves for non-Indians who wish to avoid state gambling laws, and would encourage Indians themselves to become a class of professional gambling entrepreneurs. This result sharply departs from the historic purpose of the reservation system, which was to allow Indian tribes to maintain their traditional culture by setting them apart from surrounding non-Indian communities.

California's interest in prohibiting tribal high stakes bingo, as relevant under the *Rice* balancing test, arises not only because the bingo games take commercial advantage of California gambling prohibitions against non-Indians, but also because, as explained more fully below, the games create risks of organized criminal infiltration. See pages 17-18, *infra*. The Ninth Circuit held that the State interest, although "legitimate" and "commendable," is "weak" because the case involves "only Indians," in that California regulates the Indian operators rather than the non-Indian participants. App. 8. The incident of State regulation, however, does not determine whether the tribal activity involves "only Indians." The tribal activity here involves non-Indians because, although the State regulates operators, the tribal games solicit and depend on non-Indian patronage. In *Rice*, this Court upheld a State regulation whose incident applied to Indian sellers rather than non-Indian buyers. Moreover, since the tribal games are operated by non-Indians, App. 2, the immediate incident of State regulation falls on non-Indians in any event.

Moreover, the incident of State regulation is not relevant to the State's interest in preventing criminal infiltration. Organized crime is not less likely to gain control because the State regulates operators rather than participants. Indeed, the opposite is true, for California can better prevent criminal infiltration by regulating the operators, who reap the profits.

For the foregoing reasons, the Ninth Circuit decision conflicts with *Rice* and *Colville*. This Court should grant review because the lower decision "has decided a federal question in a way in conflict with applicable decisions of this Court." Rule 17.1(c), Rules of the Supreme Court.

III

THE NINTH CIRCUIT DECISION CONFLICTS WITH RECENT STATE COURT DECISIONS HOLDING THAT STATE GAMBLING LAWS APPLY ON INDIAN RESERVATIONS

Prior to the Ninth Circuit decision, only two appellate courts—the Maine Supreme Judicial Court and the Oklahoma

Supreme Court—applied the balancing test in determining whether state gambling laws apply on Indian reservations. See *Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me. Sup. Jud. Ct.), *appeal dismissed*, 464 U.S. 923 (1983); *Oklahoma v. Seneca-Cayuga Tribe*, 711 P.2d 77 (Okla. Sup. Ct. 1985). Both appellate courts, relying on *Colville*, concluded that the balancing test supports the application of state gambling laws on Indian reservations. The Ninth Circuit decision conflicts with both decisions. This Court should review the lower decision here because it decides a "federal question in a way in conflict with a state court of last resort." Rule 17.1(c), Rules of the Supreme Court.[5]

In *Penobscot*, the Maine Supreme Judicial Court held that Maine can lawfully prohibit Indian commercial bingo operations partonized by non-Indians. The Court, citing *Colville*, applied the balancing test, described as "federal Indian common law." 461 A.2d at 482-487. Under the balancing test, the Court reasoned that the State has a "legitimate governmental interest" in prohibiting tribal bingo; that the tribal interest is "purely financial;" that the Tribe would have "nothing to 'sell' " if the State did not prohibit commercial bingo; and that the Tribe was attempting to "market an exemption" from State laws to non-Indians. *Id.* at 485. The Court also reasoned that commercial bingo has played no part in the Tribe's "historical culture and development," is "not uniquely Indian in character," and is "not a traditional Indian practice." *Id.* at 490. The Court concluded that the Tribe does not have "inherent sovereignty" to conduct the bingo games. *Id.* at 482.[6]

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[5] As explained later, the Fifth Circuit and the Ninth Circuit in an earlier decision held that Public Law 280 and the Organized Crime Control Act do not authorize state gambling laws to be applied on Indian reservations. See *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982); *Barona Group v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, 461 U.S. 929 (1983); see page 14, *infra*. Both decisions, however, interpreted federal statutes, and did not apply the balancing test.

[6] In a second, alternative holding, the Maine Court held that the same result is supported by a federal statute, the Maine Indian Claims Settlement Act. *Id.* at 487-490.

In *Seneca-Cayuga*, the Oklahoma Supreme Court upheld Oklahoma's right to prohibit Indian commercial bingo, to the extent the games are played by non-Indians.[7] The Oklahoma Court rejected the tribal sovereignty argument, stating that "bingo is [not] a traditional tribal *activity*" and that its "main (and perhaps only) purpose" is "to generate funds for the Tribes." 711 P.2d at 90 (emphasis added). The Court held that, although Indian tribes have a "legitimate interest" in "economic development," this interest does not outweigh the State's "legitimate interest in preventing infiltration of organized crime . . . ." *Id.* at 90, 91. The Court, citing *Colville*, stated that this Court "has extended state laws to tribal commercial activities affecting substantial numbers of non-Indians, where such non-Indian citizens evade state laws by benefitting from an exclusively Indian exemption." *Id.* at 90-91.

Penobscot and *Seneca-Cayuga* directly conflict with the Ninth Circuit decision here. Indeed, the Ninth Circuit did not mention either *Penobscot* or *Seneca-Cayuga*, although both were called to its attention.

This Court dismissed the Tribe's appeal in *Penobscot* "for want of a substantial federal question." 464 U.S. 923 (1983). Since the dismissal of an appeal on such grounds is a disposition "on the merits," *Hicks v. Miranda*, 422 U.S. 332, 345 (1975), *Penobscot* is the law of the land, not just of Maine. The Ninth Circuit decision conflicts not only with the State court decision in *Penobscot*, but also with this Court's disposition of *Penobscot* on its merits.[8]

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[7] The Court remanded for determination of whether the tribal games were patronized by Indians or non-Indians. 711 P.2d at 92, & n. 76. This factual issue is not presented here because the Ninth Circuit stated that the tribal games, "are played predominantly by non-Indian participants." App. 2.

[8] In its Jurisdictional Statement, the Penobscot Tribe presented the question as follows:

> "May the State of Maine prohibit the operation of a bingo game by an Indian tribal government on its own reservation, when the revenues from the operation are used solely to finance tribal

IV

THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER FEDERAL STATUTORY ENACTMENTS AUTHORIZE THE APPLICATION OF STATE GAMBLING LAWS ON INDIAN RESERVATIONS, AND TO RESOLVE THE UNCERTAINTY CAUSED BY ITS DECISIONS IN *RICE v. REHNER* AND *BRYAN v. ITASCA COUNTY*

Independently of *Rice* and *Colville*, which apply a common law balancing test in determining state jurisdiction over Indian reservations, Congress has enacted two statutes relevant here that provide for limited state jurisdiction: Public Law 280 and the Organized Crime Control Act. The Ninth Circuit held that neither enactment authorizes state and local gambling laws to be applied on Indian reservations. App. 3-6. This Court should grant review to determine whether these enactments apply here, and to clarify the relationship between these enactments and the common law principles applied in *Rice* and *Colville*.

A. Public Law 280

Public Law 280, 67 Stat. 588 (1953), 18 U.S.C. § 1162, 28 U.S.C. § 1360, authorizes California and certain other states to exercise civil and criminal jurisdiction over Indian reservations. App. 23-25. On its face, Public Law 280 allows California to apply its gambling laws on Indian reservations. In *Bryan v. Itasca County*, 426 U.S. 373 (1976), this Court held that Public Law 280 does not enable Minnesota, a Public Law 280 state, to apply its property tax laws on Indian reservations. In dictum, the Court stated that Public Law 280 includes state criminal prohibitory laws but not state "civil regulatory" laws. *Bryan*, 426 U.S. at 390. The "civil regulatory-criminal prohibitory" distinction was dictum because the property tax laws involved in *Bryan* were not regulatory.

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government services and the State permits licensed bingo games and other forms of gaming off the reservation?" Jurisdictional Statement, *Penobscot Nation v. Stilphen*, No. 83-366, October Term, 1983.

The identical question, as applied to California, is presented here.

The *Bryan* dictum, viewed in light of this Court's later decision in *Rice v. Rehner, supra*, creates an anomaly concerning state regulatory jurisdiction over Indian reservations. In *Rice*, this Court held that state *regulatory* laws are applicable on Indian reservations, assuming that the balancing test supports this result. Under the *Bryan* dictum, Public Law 280 does not authorize state *regulatory* laws to be applied on Indian reservations under any circumstances. The two decisions can be superficially reconciled on grounds that *Bryan* interpreted a statute and *Rice* applied the common law. The anomaly arises, however, because the statute involved in *Bryan*—Public Law 280—was intended to *broaden* state jurisdiction over Indian reservations, but *Bryan* interpreted the statute as affording *less* regulatory jurisdiction than all states have under the common law balancing test applied in *Rice*. In other words, a federal statute intended to broaden state jurisdiction actually confers less jurisdiction than states already have under the federal common law.

This Court in *Rice*, perhaps to avoid the anomaly, cast doubts on *Bryan's* "civil regulatory-criminal prohibitory" dictum. The Court cited *Bryan* only for the view that state "tax" laws are not included under Public Law 280, thus implying that state *regulatory* laws may be included. 463 U.S. at 734 n. 18. The Court expressed general disapproval of distinctions between state "substantive" and "regulatory" laws, *id.*, which implies disapproval of *Bryan's* "civil regulatory-criminal prohibitory" distinction.

In any event, the anomaly created by *Rice* and *Bryan* has caused a split of authority, noted earlier, among lower courts concerning whether state gambling laws apply on Indian reservations. See page 5, *supra*. In *Seminole Tribe v. Butterworth, supra*, 658 F.2d 310, and *Barona Group v. Duffy, supra*, 694 F.2d 1185, both decided before *Rice*, the Fifth Circuit and Ninth Circuit applied the *Bryan* distinction in holding that state gambling laws—classified as "civil regulatory"—are not included under Public Law 280 and hence do not apply on Indian reservations. The Ninth Circuit in the instant proceeding followed its earlier decision in *Barona* in reaching the same conclusion. App. 5. On the other hand, in *Penobscot Nation v. Stilphen, supra*, 461 A.2d 478, and *Oklahoma v. Seneca-Cayuga Tribe, supra*, 711 P.2d 77,

the Maine Supreme Judicial Court and the Oklahoma Supreme Court applied the balancing test in holding that state gambling laws *are* applicable on Indian reservations. The Oklahoma Supreme Court in *Seneca-Cayuga* specifically criticized the *Bryan* distinction as "unpersuasive." 711 P.2d at 90. This split of authority has created the anomaly that, although Public Law 280 was intended to *broaden* state jurisdiction over Indian reservations, the Public Law 280 states involved in *Seminole* and *Barona* have *less* regulatory jurisdiction than the non-Public Law 280 states involved in *Penobscot* and *Seneca-Cayuga*. This anomaly mirrors the anomaly created by *Rice* and *Bryan*.

Indeed, the confusion between these lines of authority is reflected in the lower proceedings here. The district court below expressed the view that *Rice* overruled *Bryan*, but believed that it was constrained to follow the Ninth Circuit's earlier decision in *Barona*, which applied the *Bryan* distinction. App. 4; Tr. 4-5. The Ninth Circuit below acknowledged that:

> "*Rice* may be indicative of a trend away from the civil/regulatory-criminal/prohibitory distinction in determining the application of federal and, by incorporation, state statutes on Indian reservations." App. 5 n. 4.

The Ninth Circuit did not follow the trend, however, but instead applied the *Bryan* distinction in construing Public Law 280, and indeed, as noted below, extended the distinction in construing the Organized Crime Control Act. App. 5-6.

This Court should grant review to determine whether Public Law 280 applies here, and, perhaps more importantly, to clarify the relationship between the common law principles applied in *Rice* and the statutory enactment interpreted in *Bryan*. The time has come to end the confusion caused by *Rice* and *Bryan* and resolve the divergence of authority among lower courts concerning the issue here.

B. The Organized Crime Control Act

The Organized Crime Control Act (OCCA), 84 Stat. 937 (1970), 18 U.S.C. § 1955, prohibits gambling operations "in violation of the law of a State or political subdivision in which it is

conducted." App. 25-26. The OCCA, on its face, makes state and local gambling laws applicable on Indian reservations. The OCCA is relevant here in two ways. First, it directly applies state and local gambling laws on Indian reservations, independently of the *Rice* and *Colville* balancing test. Second, it embodies and expresses the federal interest under the balancing test itself. Under the balancing test, the federal interest as reflected in the OCCA supports the application of state gambling laws on Indian reservations. The OCCA expresses federal gambling policy as clearly as 18 U.S.C. § 1161 expresses federal liquor policy, and this Court in *Rice* held that the latter enactment supports the application of California liquor laws on Indian reservations.[9]

The Ninth Circuit, following its earlier decision in *Barona Group v. Duffy, supra*, held that California's gambling laws are "civil regulatory" and hence are not included under the OCCA. App. 5-6. The Ninth Circuit thus extended *Bryan's* "civil regulatory-criminal prohibitory" distinction to the OCCA. Nothing in the OCCA or its legislative history, however, supports the distinction. The Ninth Circuit simply borrowed the distinction from *Bryan*, which involved a different statute addressing a different subject matter. This Court in *Rice* rejected an analogous "substantive-regulatory" distinction in construing another federal statute—18 U.S.C. § 1611—stating that "in the absence of a context that might possibly require it, we are reluctant to make such a distinction." *Rice*, 463 U.S. at 734 n. 18. The Ninth Circuit displayed no such reluctance in extending the distinction to the OCCA. This Court should grant review to determine whether the distinction properly applies to the OCCA.

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[9] The Ninth Circuit, in holding that the federal interest supports the tribal position here, relied on a presidential policy statement encouraging tribal economic development. App. 8. The presidential statement, however, did not consider whether gambling is an appropriate means to achieve this goal. The OCCA, which specifically provides for the application of state gambling laws on Indian reservations, expresses federal policy here more clearly than the presidential statement, which did not consider the gambling question.

C. California Gambling Policy

Even assuming the validity of *Bryan's* "civil regulatory-criminal prohibitory" distinction, California's gambling laws are essentially prohibitory rather than regulatory, and hence are included under Public Law 280. California law prohibits all forms of lotteries except where specifically authorized by law, and specifically authorizes low stakes bingo for charitable purposes. Cal. Pen. Code §§ 320, 326.5. The purpose of the statutory scheme is to prevent organized crime from establishing, or gaining control of, gambling operations in California. Thus, California law prohibits a specific form of conduct—high stakes, commercial bingo—rather than licenses or regulates it. California gambling laws are thus prohibitory within the meaning of *Bryan*.

The Ninth Circuit ruled otherwise, following its earlier decision in *Barona*. According to the Ninth Circuit, California bingo statutes are "civil regulatory" because the regulated conduct does not violate California "public policy," in that California authorizes bingo for charitable purposes. App. 4.

The Ninth Circuit appeared to assume that, because California excepts charitable bingo from its general prohibition against gambling, California regulates bingo rather than prohibits it. Under this assumption, a state criminal statute, otherwise prohibitory, becomes regulatory when the state creates an exception. The assumption is a mechanical one, because it focuses on the form of the state criminal scheme rather than its purpose. The purpose of the California scheme is to prevent organized criminal infiltration in California, and to provide exceptions only where such infiltration is unlikely to occur. Charitable bingo creates little risk of criminal involvement; the games feature low stakes—the jackpots cannot exceed $250—and the games are regulated by strict statewide standards backed by the State's law enforcement apparatus.

The tribal games involved here, however, create substantial risks of organized criminal infiltration because they feature high stakes and are not regulated. The stakes include cars, pickups, boats, and cash awards of thousands of dollars. See note 1, *supra*. The federal government does not regulate, supervise, or monitor

the games; indeed, there is virtually no federal involvement at all. The Tribes themselves generally lack the law enforcement capability to ensure that the games are honestly run. The Cabazon Tribe here, for example, which has only 25 members, cannot undertake the screening and auditing necessary to guard against criminal infiltration. Moreover, the Tribe cannot adequately handle the law enforcement problems arising when hundreds of non-Indians enter the reservation to play the games. Indeed, the Tribe lacks criminal jurisdiction over the non-Indian players. See *Oliphant v. Sequamish Indian Tribe*, 435 U.S. 191, 208 (1978). Thus, high stakes tribal bingo creates risks of organized criminal involvement that do not arise respecting charitable bingo.

The National Gambling Review Commission, established by Congress in 1970 to study gambling in the United States, § 804, 84 Stat. 930, concluded that bingo is a highly regressive form of gambling that, if not properly regulated, is susceptible to control by organized crime. Cal. Exh. 7, at 160-166. The Commission's report stated that:

> "Despite bingo's popularity as a charity fund raiser and its reputation as a harmless pasttime, it has been the object of abuse by a number of sources: Illegal parlors resort to tricks to circumvent the law or openly defy it. Racketeers are thought to control bingo games—legal and illegal—in a number of urban areas. Skimming and other scams are practiced by both organized groups and shady independent operators." *Id.* at 164.

The Commission recommended that "those States allowing bingo adopt and actively implement regulations to insure that the games are honestly run." *Id.* at 166.

Therefore, California gambling laws are prohibitory rather than regulatory, and are not rendered less so by an exception for charitable bingo that poses no risks of organized criminal involvement. California "public policy," to use the Ninth Circuit test, is offended by the tribal games because they invite the very risks which California gambling policy is intended to prevent. Therefore, California laws are included under Public Law 280, even

assuming the validity of *Bryan's* "civil regulatory-criminal prohibitory" distinction.

D. The Ninth Circuit's "Public Policy" Test

Finally, this Court should grant review to determine whether the Ninth Circuit's "public policy" test properly differentiates between state "civil regulatory" and "criminal prohibitory" laws, assuming that the distinction is otherwise valid. Indeed, *Bryan* itself does not suggest a "public policy" test. In our view, the test is illusory because all state laws, whether regulatory or prohibitory, are manifestly based on state public policy. The test allows federal courts to subjectively determine which state laws apply on Indian reservations by substituting their own judgment of state public policy for the state legislative judgment, a result that Congress obviously did not contemplate. The test conflicts with the federalism principles embodied in Public Law 280 and the OCCA, and should be rejected.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction and set the case for plenary consideration.

DATED: April 15, 1986

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General of the
State of California –
STEVE WHITE
Chief Assistant Attorney General
RODERICK E. WALSTON
FREDERICK R. MILLAR, JR.
Supervising Deputy
Attorneys General
RUDOLF CORONA, JR.
Deputy Attorney General
Attorneys for Appellant
State of California

GERALD J. GEERINGS
County Counsel of Riverside County
PETER H. LYONS
Principal Deputy County Counsel
GLENN R. SALTER
Deputy County Counsel
Attorneys for Appellant
Riverside County

Appendix 1

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-6635
D.C. No. CV 84-1117

Cabazon Band of Mission Indians,
Plaintiff-Appellee,

v.

County of Riverside, State of California, and Ben Clark,
Defendants-Appellants.

D.C. No. CV 83-3037

Morongo Band of Mission Indians,
Plaintiff-Appellee,

v.

County of Riverside, State of California, and Ben Clark,
Defendants-Appellants.

[Filed Apr. 8, 1986]

AMENDED OPINION

Appeal from the United States District Court
for the Central District of California
Laughlin E. Waters, District Judge, Presiding

Argued and Submitted October 10, 1985—San Francisco, CA

Decided February 25, 1986

Before: Anderson, Farris, and Nelson, Circuit Judges

Anderson, Circuit Judge:

I. OVERVIEW

The State of California (State) and County of Riverside (County) appeal the district court's granting of the Cabazon and Morongo Indians' (Tribes) motion for summary judgment and its issuance of permanent injunction restraining the State and

County from applying their gambling laws on the reservation. The only issue on appeal is whether state and local gambling laws apply on Indian reservations. We affirm.

II. FACTS

The facts, as stipulated by the parties, are as follows:

The Tribes occupy separate reservations situated in Riverside Country, California. The Tribes conduct bingo games for profit on their reservations. The profits are the sole source of income for the Tribes and the games provide the main source of employment. The Tribes have their own ordinances regulating the bingo games. The games are operated by non-Indian professional operators, who receive a percentage of the profits. The games are played predominantly by non-Indian participants. The jackpots exceed $250. Under California law, bingo games may be played only for bona fide charitable purposes; the games must be operated by members of the charitable organization; and the jackpots cannot exceed $250. The Tribes' bingo games violate these provisions.

The Cabazon Band also conducts three card parlor games on its reservation: draw poker, lowball draw poker, and panguingue. A Riverside County ordinance prohibits the playing of these games.[1]

The Tribes filed an action for declaratory and injunctive relief and for damages against Riverside County, alleging that the County could not lawfully prohibit the bingo and card games on the reservation. The State of California intervened. The parties filed cross motions for summary judgment on the jurisdictional question whether State and County gambling laws apply on reservations. The district court granted the Tribes' motion for summary judgment and denied the County and State's motion. The district court issued final judgment on the jurisdictional issues under Rule 54(b) of the Federal Rules of Civil Procedure;

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[1] We find no basis upon which to distinguish the Tribe's bingo activities from the Tribes' card parlor games. Therefore, our discussion in this case, although specifically addressing the bingo games, applies with equal force to the card games.

issued a permanent injunction restraining the County and State from applying their gambling laws on the reservation; and retained jurisdiction to consider the damages issue. The County and State appealed.

III. DISCUSSION

The State contends that state and local laws pertaining to gambling should apply on Indian reservations under (1) Public Law 280, (2) The Organized Crime Control Act, or (3) federal common law.

A. Public Law 280

The Act of August 15, 1953, Pub. L. No. 83-280, 67 Stat. 588 (Public Law 280) provides some applicability of state law over on-reservation activities. Section 4, codified at 28 U.S. C. § 1360, grants states civil jurisdiction over Indian reservations in words that on the surface seem to make all state laws of general application effective.[2] *Barona Group of Capitan Grande Band, etc. v. Duffy*, 694 F.2d 1185, 1187 (9th Cir. 1982). The Supreme Court, however, has limited the section to give states jurisdiction only over private civil litigation involving reservation Indians in state court. *Bryan v. Itasca County*, 426 U.S. 373, 385 (1976); *Barona*, 694 F.2d at 1187-88. Section 2 of Public Law 280, codified at 18 U.S.C. § 1162, confers on certain states, including California, full criminal jurisdiction over offenses committed by Indians on the reservation.[3] *Barona*, 694 F.2d at 1188. Thus,

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[2] Section 4(a), as codified at 28 U.S.C. § 1360(a)(1976), provides:

(a) Each of the States . . . listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over other civil causes of action, and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State . . . :

. . . .

California . . . . All Indian country within the State.

[3] Section 2(a), as codified at 18 U.S.C. § 1162(a)(1976), provides:

Public Law 280 authorizes the application of state "criminal/prohibitory" laws on Indian reservations, but not "civil/regulatory" laws. *Id.* This court has held that a state law is criminal/prohibitory if the activity the statute addresses violates "public policy," and civil/regulatory if the activity does not. *Barona*, 694 F.2d at 1188-90. Therefore, the issue that must be resolved in this case is whether the gambling activities conducted by the Tribes on their reservations violate the public policy of the State of California.

This court specifically held in *Barona* that the same California gambling law in question in this case does not, for a variety of reasons, violate California public policy. *Id.* Hence, said the court in *Barona*, the California law is civil/regulatory and does not apply to the Indian reservations. *Id.*

The district court judge ruled that *Barona* is dispositive in the present case. However, he also felt, and the State argues, that the Supreme Court's recent decision in *Rice v. Rehner*, 463 U.S. 713 (1983), supports a re-examination of *Barona* and the civil/regulatory-criminal/prohibitory distinction. In *Rice*, the Supreme Court rejected what it terms the "substantive-regulatory" distinction because neither the text of 18 U.S.C. § 1161 (a federal Indian statute which incorporates state law) nor its legislative history reveal any such distinction. *Rice*, 463 U.S. at 734 n. 18. The Court went on to say that "[i]n the absence of a context that might possibly require it, we are reluctant to make such a distinction." *Id.* It can be said with equal force that neither the text nor the legislative history of Public Law 280 reveal any civil/regulatory-criminal/prohibitory distinction. However, the Supreme Court, in interpreting Public Law 280, has stated that "statutes passed for the benefit of dependent Indian tribes . . . are

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(a) Each of the States . . . listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed . . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State . . . and the criminal laws of such State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State . . . :

. . . .

California . . . . All Indian country within the State.

to be liberally construed, doubtful expressions being resolved in favor of the Indians." *Bryan*, 426 U.S. at 392. Although the regulatory bingo statute may arguably be interpreted as prohibitory, the resolution must be in favor of the Indian tribe. *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310, 316 (5th Cir. 1981). Furthermore, we are bound by the precedent established by this circuit in *Barona*[4] which is factually and legally indistinguishable from the case at bar. Therefore, we hold that the gambling activities of the Tribes on the Indian reservation do not violate California public policy. For that reason, we find that California's bingo statute is civil/regulatory in nature and does not apply, under Public Law 280, on the Indian reservations.

B. The Federal Organized Crime Control Act

The Organized Crime Control Act of 1970, 18 U.S.C. § 1955 (1976) (OCCA) incorporates by reference certain state gambling laws and makes the violation of the state provisions a federal offense.[5]

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[4] *Rice* may be indicative of a trend away from the civil/regulatory-criminal/prohibitory distinction in determining the application of federal and, by incorporation, state statutes on Indian reservations. However, *Rice* does not overrule *Barona* nor does it alter its precedential weight. *Rice* involved the interpretation of 18 U.S.C. §1161, a statute not involved here. Furthermore, one of the principal underpinnings of the *Rice* decision was the fact that in the particular context of liquor licensing, the Court found no "firm federal policy of promoting tribal self-sufficiency and economic development." *Rice*, 463 U.S. at 724 (quoting *White Mountain*, 448 U.S. at 143)). As we discuss below, the same is not true with respect to tribal bingo activities.

[5] The Organized Crime Control Act, 18 U.S.C. § 1955 provides:

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

(b) As used in this section—

(1) 'illegal gambling business' means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

In *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981), this court held that whether a tribal activity is "a violation of the law of a state" within the meaning of the OCCA depends on whether it is contrary to the "public policy" of the state. *Id.* at 895-96; *Barona*, 694 F.2d at 1190. "Thus, *Farris* makes co-extensive the tests for application of state law to Indian reservations under [the OCCA] and for direct application of state law under Public Law 280." *Barona*, 694 F.2d at 1190. Because we have concluded that bingo games are not contrary to the public policy of California, the activity is not violative of the OCCA.

C. Federal Common Law

We turn now to the State's argument that the Supreme Court has adopted a federal common law in determining the applicability of state laws on Indian reservations.[6] This requires a "particularized inquiry" into "the nature of state, federal, and tribal interests at stake." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980). *See also Queets Band of Indians v. State of Washington*, 765 F.2d 1399, 1406 (9th Cir. 1985), *vacated upon settlement of the parties*, 783 F.2d ____ (1986). Under this particularized inquiry test, state laws may be applied to Indian reservations unless such application would (1) interfere with reservation self-government, or (2) impair a right granted or reserved by federal law. *Rice*, 463 U.S. at 718; *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973).

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

[6] We examine this argument only after having decided that there is no federal law preempting the determination of the applicability of state and local gambling laws on Indian reservations. Although resort to federal common law occurs only as a "necessary expedient" in a "few and restricted instances," resort may be had to federal common law in the absence of an applicable Act of Congress. *See Milwaukee v. Illinois*, 451 U.S. 304, 313-14 (1981).

The Supreme Court's decision in *Rice* states that "our recent cases have established a 'trend . . . away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption.' " *Rice*, 463 U.S. at 718 (quoting *McClanahan v. Arizona State Tax Comm.*, 411 U.S. 164, 172 (1973)). However, aside from a strong federal policy to encourage and foster tribal self-government and to promote reservation economic development, *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983), there is apparently no federal law preempting the determination of the applicability of state and local gambling laws on Indian reservations. Therefore, federal law does not create a barrier to the application of state and local gambling laws on Indian reservations.[7] However, our analysis does not end here.

Federal preemption is only one of two barriers to state jurisdiction; such jurisdiction is also barred if it would impermissibly infringe upon the right of the reservation Indians to make their own laws and to be governed by them. *Williams v. Lee*, 358 U.S. 217, 221 (1959). As has been pointed out by the Supreme Court, the concept of tribal sovereignty and independence still plays a role in the preemption analysis to the extent that it provides a "backdrop" against which federal policy and interests must be measured. *White Mountain*, 448 U.S. at 143, 100 S.Ct. at 2583; *McClanahan*, 411 U.S. at 172, 93 S.Ct. at 1262. The role of inherent tribal sovereignty in preemption analysis is defined by "notions of sovereignty that have developed from historical traditions of tribal independence." *Rice*, 463 U.S. at 719 (quoting *White Mountain*, 448 U.S. at 145, 100 S.Ct. at 2584). "When we determine that tradition has recognized a sovereign immunity in favor of the Indians . . . , then we usually are reluctant to infer that Congress has authorized the assertion of state authority . . . ." *Rice*, 463 U.S. at 719.

Accordingly, we turn to the state, federal and tribal interests at stake in order to determine whether application of the state and local gambling laws will interfere with reservation self-govern-

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[7] At the same time, federal law does not promote nor allow for the application of these laws on the reservations.

ment. If so, then these laws may not be applied on the reservation under the federal common law's particularized inquiry test.

1. State Interest

The State contends that it has a significant state interest in prohibiting tribal bingo games in order to prevent the intrusion of organized crime in California. Although this is a legitimate concern, there is no evidence whatsoever that organized crime exists on these Indian reservations. Furthermore, "[w]hen on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." *White Mountain*, 448 U.S. at 144. The California bingo laws regulate only the *operation* of certain types of gambling. These laws do not make it a crime to *participate* in the gambling activities. Therefore, the state gambling laws are directed at the on-reservation conduct of the Tribes and not the conduct of non-Indians on the reservations. As a consequence, we find that the State's interest, although commendable, is weak.

2. Federal Interest

Current federal policy is to encourage and foster tribal self-government and to promote reservation economic development. *See Mescalero Apache Tribe*, 462 U.S. 324 (citing to and quoting from numerous federal statutes that support these goals). This federal policy was further evidenced by President Reagan's statement that: "It is important to the concept of self government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self government." *Statement by the President: Indian Policy*, The White House, January 24, 1983. Furthermore, tribal bingo games have been recognized as one way to support this policy. A policy directive issued by the Assistant Secretary of the Interior on March 2, 1983 stated that the Department of the Interior would "strongly oppose" any proposed legislation that

> would subject Indian individuals, Indian organizations, and tribal governments to state laws with regard to licensing, regulation or prohibition of gambling on Indian reservations

> . . . . Such a proposal is inconsistent with the President's Indian Policy Statement of January 24, 1983 . . . . A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purpose enunciated in the President's Message. Given the often limited resources which tribes have for revenue-producing activities, it is believed that this kind of revenue-producing possibility should be protected and enhanced.

Finally, an affidavit submitted on behalf of the Tribes by the Director of Indian Services, Bureau of Indian Affairs, stated that:

> It is the department's position that tribal bingo enterprises are an appropriate means by which tribes can further their economic self-sufficiency, the economic development of reservations and tribal self-determination. All of these are federal goals for the tribes. Furthermore, it is the Department's position that the development of tribal bingo enterprises is consistent with and in furtherance of President Reagan's Indian Policy Statement of January 24, 1983.

Based on the foregoing, we find the federal interest to be strong.

3. Tribal Interests

The Tribes offer a number of compelling interests in favor of their position. The bingo games operated on the reservations are the Tribes' only source of income. The games are the major source of employment for the reservation Indians and the sole source of revenue for operating their tribal governments and for providing services to their members.

The State argues that the tribal interest is weak for two reasons: (1) they are "marketing an exemption" from state laws to non-Indians who go on the reservation; and (2) the tribal tradition does not encompass commercial gambling, particularly where predominantly non-Indian participants are involved.

A. Marketing an Exemption

In support of their contention that the Tribes are "marketing an exemption" from California law, the State cites *Washington v.*

Confederated Tribes of the Colville Reservation, 447 U.S. 134 (1980).

In *Colville*, the Indian tribes sought to bar the State of Washington from enforcing a cigarette excise tax and a general sales tax on cigarette sales by on-reservation tobacco outlets to non-Indian purchasers. The Supreme Court held that the imposition of these taxes on on-reservation purchases of cigarettes by non-Indians was valid. For the following reasons, we find that *Colville* does not support the State's contention.

First, the Supreme Court in *Colville* did not rule that a Tribe's "marketing of a [tax] exemption" enabled the state to prohibit the Tribe from engaging in the underlying activity, which is what the State is trying to accomplish in this case. Rather, the Court ruled that if all the Tribe is marketing to non-Indians is an exemption from state taxes which the state would otherwise use to provide off-reservation services to off-reservation residents, then the Tribe's legitimate interest in making those sales would not outweigh the state's legitimate interest in taxing those same transactions. In the current case, the tribal interest in providing revenue and jobs for its members outweighs the State's interest in protecting against the *potential* for intrusion of organized crime.

Second, in *Colville*, the Court recognized that the Tribe's interest in generating revenues for essential governmental programs "is strongest when the revenues are derived from value generated on the reservation by activities involving the Tribes . . . ." *Colville*, 447 U.S. at 156-57. *See Mescalero Apache Tribe*, 462 U.S. at 337. Even the State concedes that "the revenues here are derived from value generated by on-reservation activities . . . ." Appellant's Brief at 28, n.11. Instead of merely importing products to resell in a manner which deprives the State of revenues which would be used to provide state services off-reservation, the Tribes in this case built and help operate gambling facilities, employ tribal members, regulate and conduct these activities wholly within their reservation, and utilize the funds to provide necessary governmental services for their members. We agree with both parties that the revenues here are derived from value generated on the reservation by activities involving the Tribes. We therefore find the Tribes' interest to be strong.

B. Tribal Tradition

As we pointed out earlier, tribal tradition remains highly relevant in determining whether state laws apply on Indian reservations. The State contends that the Tribes involved in this case did not traditionally engage in tribally sponsored, high stakes commercial gambling operations catering primarily to non-Indian participants. Therefore, since no such tradition exists, we "may accord less weight to the 'backdrop' of tribal sovereignty." *Rice*, 463 U.S. at 720.

We find it unnecessary to decide this issue because we believe that the State's focus is too narrow. The focus in determining whether a tribal tradition exists should instead be on whether the tribe is engaged in a traditional governmental function, not whether it historically engaged in a particular activity. The Tribes in this case are engaged in the traditional governmental function of raising revenue. They are thereby exercising their inherent sovereign governmental authority. One of our recent decisions supports this analysis. In *Crow Tribe of Indians v. State of Montana*, 650 F.2d 1104 (9th Cir. 1981), *modified* at 665 F.2d 1390 (1982), we cited zoning and automobile registration as examples of activities which, though obviously not "traditional" tribal activities, were nonetheless among the "traditional governmental functions" currently exercised by Indian tribes. *Id.* at 1110.

Having determined that a tradition exists which recognizes a sovereign immunity in favor of the Indians, we are reluctant to infer that the State should exercise authority in this case. *See Rice*, 463 U.S. at 719; *see also Queets*, 765 F.2d at 1407.

In light of the foregoing discussion, we find that the federal and tribal interests at stake here outweigh the State's interest. Therefore, under the federal common law's particularized inquiry test, the State and County may not apply their gambling laws on the Indian reservations because application of these laws would interfere with reservation self-government.

We affirm the summary judgment and the permanent injunction restraining the County and the State from applying their gambling laws on the reservations.

AFFIRMED.

Appendix 2

GLENN M. FELDMAN
ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT
1129 20th Street, N.W., Suite 506
Washington, D.C. 20036
Telephone: (202) 331-8690

PETER H. STRONG
LAW OFFICES OF KENNETH G. GRIFFIN
515 South Figueroa Street, 8th Floor
Los Angeles, California 90071
Telephone: (213) 622-2488

Attorneys for Plaintiff
THE CABAZON BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (Tx)

THE CABAZON BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
and BEN CLARK
Defendants,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
Defendant,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

[Filed Dec. 6, 1984]

ORDER

The motion of plaintiff Cabazon Band of Mission Indians for partial summary judgment against defendants County of Riverside, California and Sheriff Ben Clark, and defendant-intervenor State of California having come on for hearing on Monday, November 5, 1984, and the Court having considered the papers filed by the parties and having heard the arguments of counsel, and the Court having accepted the Agreed Upon Statement of Uncontroverted Facts as between the parties, and having issued its Findings of Fact and Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED that the motion of plaintiff Cabazon Band of Mission Indians for partial summary judgment against defendants and defendant-intervenor is granted and the motion of defendants and defendant-intervenor for summary judgment against the plaintiff is denied, and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

1. California Penal Code § 326.5 and Riverside County Ordinance Number 558 are of no force and effect on and within the boundaries of the Cabazon Indian Reservation against the Cabazon Band of Mission Indians, its members or other persons engaging in, or permitting to be played, tribally sponsored and sanctioned bingo games.

2. The defendants and defendant-intervenor are without authority or jurisdiction to enforce or attempt to enforce California Penal Code § 326.5 or Riverside County Ordinance Number 558 against the Cabazon Band of Mission Indians, its members or other persons engaging in or permitting to be played tribally sponsored and sanctioned bingo games on and within the boundaries of the Cabazon Indian Reservation.

3. Defendants County of Riverside, California and County Sheriff Ben Clark, and defendant-intervenor State of California, their successors, assigns, officers, agents, employees, attorneys and all other persons acting on their behalf or in concert with them, are hereby permanently restrained and enjoined from taking any steps to enforce or to attempt to enforce California Penal Code § 326.5 or Riverside County Ordinance Number 558

against the Cabazon Band of Mission Indians, its members or other persons engaging in, or permitting to be played, tribally sponsored and sanctioned bingo games on and within the boundaries of the Cabazon Indian Reservation.

4. California Penal Code §§ 330-31 and Riverside County Ordinance Number 331 are of no force and effect on and within the boundaries of the Cabazon Indian Reservation against the Cabazon Band of Mission Indians, its members or other persons engaging in, permitting to be played, or wagering on the tribally sponsored and sanctioned games of draw poker, lowball draw poker, panguingue or other card games not prohibited under California Penal Code §§ 330-31.

5. Defendants and defendant-intervenor are without authority or jurisdiction to enforce or attempt to enforce California Penal Code §§ 330-31 or Riverside County Ordinance Number 331 on and within the boundaries of the Cabazon Indian Reservation against the Cabazon Band of Mission Indians, its members or other persons engaging in, permitting to be played, or wagering on the tribally sponsored and sanctioned games of draw poker, lowball draw poker, panguingue, or other card games not prohibited under California Penal Code §§ 330-31.

6. Defendants County of Riverside, California and County Sheriff Ben Clark, and defendant-intervenor State of California, their successors, assigns, officers, agents, employees, attorneys and all other persons acting or attempting to act on their behalf or in concert with them, are hereby permanently restrained and enjoined from taking any steps to enforce California Penal Code §§ 330-31 or Riverside County Ordinance Number 331 on and within the boundaries of the Cabazon Indian Reservation against the Cabazon Band of Mission Indians, its members or other persons engaging in, permitting to be played, or wagering on the tribally sponsored and sanctioned games of draw poker, lowball draw poker, panguingue or other card games not prohibited under California Penal Code §§ 330-31.

7. Plaintiff shall recover its cost of suit herein from defendants and defendant-intervenor.

8. Pursuant to Local Rule 16.10, plaintiff shall have until 30 days following the entry of final judgment on the remaining damage claim to file and serve a single application for attorneys fees and expenses covering the entirety of this case.

Dated: 6 Dec 84

/s/ LAUGHLIN E. WATERS
Laughlin E. Waters
United States District Judge

Submitted by:

/s/ GLENN M. FELDMAN
Glenn M. Feldman
Attorney for Plaintiff

Approved As To Form:

/s/ GLENN SALTER by RW
Glenn Salter
Deputy County Counsel

/s/ RODERICK WALSTON
Roderick Walston
Assistant Attorney General

Appendix 3

GLENN M. FELDMAN
ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT
1129 20th Street, N.W., Suite 506
Washington, D.C. 20036
Telephone: (202) 331-8690

PETER H. STRONG
LAW OFFICES OF KENNETH G. GRIFFIN
515 South Figueroa Street, 8th Floor
Los Angeles, California 90071
Telephone: (213) 622-2488

Attorneys for Plaintiff
THE CABAZON BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 83-1117 LEW (Tx)

THE CABAZON BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
and BEN CLARK
Defendants,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

Case No. CV 83-3073 LEW

MORONGO BAND OF MISSION INDIANS,
Plaintiff,

v.

THE COUNTY OF RIVERSIDE, CALIFORNIA
Defendant,

and

THE STATE OF CALIFORNIA,
Defendant-Intervenor.

[Filed Dec. 5, 1984]

JUDGMENT

On Monday, November 5, 1984, the motion of plaintiff Cabazon Band of Mission Indians for partial summary judgment against defendants County of Riverside, California, Sheriff Ben Clark and defendant-intervenor State of California and defendants' and defendant-intervenor's cross motion for summary judgment against plaintiff came on for hearing before the Court. The Court having considered the papers filed by the parties and the arguments of counsel, and having duly rendered its decision, having entered an appropriate Order and having issued Findings of Fact and Conclusions of Law,

IT IS ORDERED AND ANNOUNCED that plaintiff's motion for partial summary judgment is granted and defendants' and defendant-intervenor's motion for summary judgment is denied, and

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff shall recover its cost of suit herein from defendants and defendant-intervenor and pursuant to Local Rule 16.10, plaintiff shall have until 30 days following the entry of final judgment on the remaining damage claim to file and serve a single application for attorneys fees and expenses covering the entirety of this case, and

IT IS FURTHER ORDERED AND ADJUDGED that while the granting of plaintiff's motion for partial summary judgment does not dispose of plaintiff's damage claim against defendants, which claim must still be adjudicated by this Court, pursuant to Rule 54(b), Fed. R. Civ. P., the court has determined that there is no just reason for delay and directs that this judgment be entered.

Dated: Dec 84

/s/ Laughlin E. Waters
Laughlin E. Waters
United States District Judge

Submitted by:

/s/ Glenn M. Feldman
Glenn M. Feldman
Attorney for Plaintiff

Approved As To Form:

/s/ Glenn Salter by RW
Glenn Salter
Deputy County Counsel

/s/ Roderick Walston
Roderick Walston
Assistant Attorney General

Appendix 4

United States District Court
Central District of California

Case Number CV 83 1117 LEW (Tx)

Cabazon Band of Mission Indians
Plaintiff(s)
vs.
Cnty of Riverside et al
Defendant(s)

NOTICE OF ENTRY

TO THE ABOVE NAMED PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

You are hereby notified that partl Summary Jgmnt has been entered in favr of pltf; deft & deft-intrvnr's mot fr S/J DENIED; defts permantly enjoined agnst tkng measures to enfrce Cal Penal Codes or Riverside Cnty ordnces as to pltf's tribally sancnd bingo games or card games in the above entitled case was entered in the docket on 12-10-84

You are also notified that if this case was tried and you introduced exhibits into evidence, they must be claimed at this office *after* the expiration of thirty days from the receipt of this notice. (After *sixty* days in cases in which the United States, its officers or agencies were parties) Unless they are claimed within thirty days after the expiration of the above period, they will be destroyed pursuant to Local Rule 29.2. If an appeal is taken they will, of course, be held until the Appellate Court finally determines the matter. Exhibits which are attached to a pleading will not be destroyed but will remain as a permanent record in the case file.

Appendix 5

United States District Court
Central District of California
Case Number CV 83 3037 LEW (JRx)
Morongo Band
Plaintiff(s)
vs
Riverside Cnty & B Clrk
Defendant(s)

NOTICE OF ENTRY

TO THE ABOVE NAMED PARTIES AND TO THEIR ATTORNEY(S) OF RECORD

You are hereby notified that ORD tht Cabazon Band of Mission Indians fr partl S/J GRNTD, & mot of defts & deft-intrvnr fr S/J DEN re plyng of tribally sponsrd bingo games, draw poker, lowball poker, & othr card games & ORD tht Cabazon to recvr costs of suit & atty's fees & expenses following entry of fnl jgmnt in the above entitled case was entered in the docket on 12-10-84.

You are also notified that if this case was tried and you introduced exhibits into evidence, they must be claimed at this office *after* the expiration of thirty days from the receipt of this notice. (After *sixty* days in cases in which the United States, its officers or agencies were parties) Unless they are claimed within thirty days after the expiration of the above period, they will be destroyed pursuant to Local Rule 29.2. If an appeal is taken they will, of course, be held until the Appellate Court finally determines the matter. Exhibits which are attached to a pleading will not be destroyed but will remain as a permanent record in the case file.

Appendix 6

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-6635
D.C. No. CV 83-1117 (LEW) (TX)

Cabazon Band of Mission Indians,
Plaintiff-Appellee,

v.

County of Riverside, State of California, and Ben Clark,
Defendants-Appellants.

D.C. No. CV 83-3037 (LEW)

Morongo Band of Mission Indians,
Plaintiff-Appellee,

v.

County of Riverside, State of California, and Ben Clark,
Defendants-Appellants.

[Filed April 14, 1986]

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

The State of California, Riverside County, and Ben Clark hereby appeal the decision of this court, as amended, rendered in *Cabazon Band of Mission Indians v. County of Riverside, et al.*, and *Morongo Band of Mission Indians v. County of Riverside, et al.*, No. 84-6635. The amended decision from which the appeal is taken was rendered on April 8, 1986. The appeal is filed pursuant to 28 U.S.C. § 1254(2), and is filed with respect to all parts of said decision.

Dated: April 14, 1986

John K. Van de Kamp
Attorney General
of the State of California
Roderick E. Walston
Rudolf Corona, Jr.
Deputy Attorneys General

By RODERICK E. WALSTON
Deputy Attorney General

Gerald J. Geerlings
County Counsel
Peter H. Lyons
Principal Deputy
Glenn R. Salter
Deputy

By GLENN R. SALTER
Deputy County Counsel
Attorneys for Defendants-
Appellants

Appendix 7

I. Public Law 280 provides as follows:

"State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of

any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

67 Stat. 588 (1953), 28 U.S.C. § 1360.

* * *

"State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	AllIndian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is

subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction."

67 Stat. 588 (1953), 18 U.S.C. § 1162.

II. The Organized Crime Control Act provides as follows:

"Prohibition of illegal gambling businesses

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business, shall be fined not more than $20,000 or imprisoned not more than five years, or both.

"(b) As used in this section—

(1) "illegal gambling business" means a gambling business which—

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

"(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

"(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity."

84 Stat. 937 (1970), 18 U.S.C. § 1955.

Appendix 8

Survey of Tribal Bingo Operations
Conducted by U.S. Department of
The Interior, 1985

Northern Cheyenne (Montana)
Chippewa Cree Tribe (Montana)
Eastern Band of Shoshone and the Northern Arapahoe Tribe (Wyoming)
Ft. Peck Assiniboine and Sioux Tribe (Montana)
Ft. Belknap Indian Community (Montana)
Blackfeet Tribe (Montana)
Seminole Tribe of Florida (Florida)
Seneca Nation of Indians (New York)
St. Regis Mohawk Tribe (New York)
Eastern Cherokee (North Carolina)
Poarch Band of Creek Indians
Tulalip Tribes of the Tulalip Reservation (Washington)
Confederated Tribes of Siletz (Oregon)
Puyallup Tribe (Washington)
Muckleshoot Indian Tribe (Washington)
Confederated Salish & Kootenai Tribes (Montana)
Lower Elwha Tribal Community (Washington)
Makah Indian Tribe (Washington)
Quileute Indian Tribe (Washington)
Shoalwater Bay Indian Tribe (Washington)
Turtle Mountain Band of Chippewa Indians (North Dakota)
Winnebago Tribe (Nebraska)
Omaha Tribe of Nebraska (Nebraska)
Flandreau Santee Sioux Tribe (South Dakota)
Lower Brule Sioux Tribe (South Dakota)
Sisseton-Wahpeton Sioux Tribe (South Dakota)
Yankton Sioux Tribe (South Dakota)
Devils Lake Sioux Tribe (North Dakota)
Osage Tribe of Indians (Oklahoma)
Thlopthlocco Tribal Town (Oklahoma)
Muscoge (Creek) Nation of Oklahoma (Oklahoma)
Chickasaw Nation (Oklahoma)
Seneca-Cayuga (Oklahoma)

Eastern Shawnee Tribe of OK (Oklahoma)
Iowa Tribe of Kansas and Nebraska (Oklahoma)
Prairie Band Patawatomi/Kansas (Kansas)
Kickapoo Tribe of Kansas (Kansas)
Cheyenne-Arapaho Tribes of Oklahoma (Oklahoma)
Apache Tribe of OK (Oklahoma)
Comanche Tribe of Oklahoma (Oklahoma)
Ft. Sill Apache Tribe (Oklahoma)
Kiowa Comanche Apache Bingo (Oklahoma)
Kiowa Tribe of OK (Oklahoma)
Kaw or Kansa Tribe of OK (Oklahoma)
Otoe-Missouria Tribe of Oklahoma (Oklahoma)
Pawnee Tribe of Oklahoma (Oklahoma)
Ponca Tribe of Oklahoma (Oklahoma)
Tonkawa Tribe of Oklahoma (Oklahoma)
Sac & Fox of Oklahoma (Oklahoma)
Iowa Tribe of Oklahoma (Oklahoma)
Bishop Tribal Council (California)
Chicken Ranch (California)
Santa Rosa Rancheria (California)
Laytonville Rancheria (California)
Hoopa Valley Tribe (California)
Resighini Rancheria (California)
Pit River Tribe (California)
Barona Group of Mission Indians (California)
Cabazon Band of Mission Indians (California)
Mo[illegible]ngo Band of Mission Indians (California)
Rincon Band of Mission Indians (California)
Santa Ynez Band of Mission Indians (California)
Soboba Band of Mission Indians (California)
Sycuan Band of Mission Indians (California)
Citizen Band Potawatomi Tribe of Oklahoma (Oklahoma)
Absentee Shawnee Tribe of Oklahoma (Oklahoma)
Chemehuevi Tribe (California)
Quechan Tribe (Arizona)
Yavapai-Prescott Indian Tribe (Arizona)
Ft. McDowell Mohave-Apache (Arizona)
Leech Lake Band of Minnesota Chippewas (Minnesota)
Mille Lacs Band of Chippewas (Minnesota)

Grand Portage Band of Minnesota Chippewas (Minnesota)
White Earth Band of Minnesota Chippewas (Minnesota)
Fond du Lac Band of Minnesota Chippewas (Minnesota)
Prairie Island Community Council (Minnesota)
Lower Sioux Indian Community (Minnesota)
Shakopee Midewakanton Sioux (Minnesota)
Sault Ste. Marie Tribe of Chippewa Indians (Michigan)
Saginaw Chippewa Indian Tribe (Michigan)
Keweenah Bay Indian Community (Michigan)
Bay Mills Indian Community (Michigan)
Grand Traverse Band of Ottawa & Chippewa Indians (Michigan)
Hannahville Indian Community (Michigan)
Forest County Potawatomi Tribe (Wisconsin)
Wisconsin Winnebago Business Committee (Wisconsin)
Lac Courte Oreilles (Wisconsin)
Stockbridge Munsee (Wisconsin)
Bad River Band of Lake Superior Chippewa Indians (Wisconsin)
Sokaogon Chippewa (Wisconsin)
St. Croix Chippewa (Wisconsin)
Lac du Flambeau (Wisconsin)
Oneida (Wisconsin)
Red Lake Band of Chippewa Indians (Minnesota)
Menominee Indian Tribe of Wisconsin (Wisconsin)
Pueblo of Sandia (New Mexico)
San Juan Pueblo (New Mexico)
Pueblo of Acomita (New Mexico)
Southern Ute Indian Tribe (Colorado)
Ute Mountain Ute (Colorado)

A survey conducted by the California Attorney General's office in late 1985, after the above Department of the Interior survey was completed, indicated that 26 tribal bingo operations are in effect on 26 different reservations or rancherias in California.